

RELATED CORRESPONDENCE
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

11-14-75



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of

THE TOLEDO EDISON COMPANY and
THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY
(Davis-Besse Nuclear Power Station,
Units 1, 2 & 3)

NRC Docket Nos. 50-346A
50-500A
50-501A

THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY, ET AL.
(Perry Nuclear Power Plant,
Units 1 & 2)

NRC Docket Nos. 50-440A
50-441A

MINUTES OF CONFERENCE CALL
HELD NOVEMBER 5, 1975

At the conclusion of Prehearing Conference #7 held on October 31, 1975, the Board indicated that with respect to the need for potential additional time by Applicants to complete their pretrial brief that a conference call would be held at approximately 2:00 p.m. on November 5th to discuss this matter. ^{1/} Also on the agenda for the conference call was the timing of responses by other parties to "Applicants' Motion for Determination that Davis-Besse Unit 1 is 'Grandfathered' For Purposes of Operation" filed November 4, 1975 before the Licensing Board. This motion was filed simultaneously with "Applicants' Motion Requesting The Appeal Board to Direct Certification To It Of Applicants' Motion For Determination That Davis-Besse Unit 1 is 'Grandfathered' For Purposes Of Operation" which was also filed with the Appeal Board on November 4, 1975.

1/ In addition on November 4, 1975, Applicants filed, "Applicants' Motion For An Extension of Time Within which To File Their Pre-hearing Brief."

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Accordingly, at approximately 2:15 p.m. on November 5th a conference call was convened with the following participants: Chairman of the Licensing Board, Douglas V. Rigler; Steven M. Charno, for the Department of Justice; William Bradford Reynolds, Counsel for Applicants; Reuben Goldberg, Counsel for the City of Cleveland; and Roy P. Lessy, Jr., Counsel for NRC Staff. Mr. Lessy was designated to act as secretary for purposes of recording minutes of the call.

At the outset the Chairman indicated that he would like to keep the two subjects separate, that is timing of responses to Applicants' motion with respect to Davis-Besse 1, and potential adjustment of the Perry schedule in light of Applicants' timing needs with respect to their Pretrial Brief. Mr. Charno, on behalf of the Department of Justice requested 30 days from the Licensing Board to respond to the grandfathering motion. Mr. Lessy and Mr. Goldberg indicated that they had been contacted by the Appeal Board which had indicated that responses by parties other than Applicants to the Appeal Board was not necessary at this time. The Chairman responded that the motion is lodged initially with the Licensing Board and that the Licensing Board would go forward on that basis. Accordingly, Mr. Goldberg indicated that the City of Cleveland would also like 30 days to respond to Applicants' motion. With respect to these requests, Mr. Reynolds objected to any time extension and indicated that the issue had recently arisen in the Farley antitrust proceedings and that the Department of Justice and NRC Staff had taken positions with respect to grandfathering in that proceeding. Mr. Reynolds also indicated that Mr. Goldberg also served as counsel in that proceeding.

Mr. Goldberg responded that his firm did represent certain parties in that proceeding, but that he had not fully participated in the grandfathering matter raised therein. Upon questioning by Mr. Rigler, Mr. Reynolds agreed to grant the parties 15 days to respond to the grandfathering motion. The Chairman then indicated that the Board would issue an order with respect to the timing of responses in light of the request for 30 days and Applicants' position that they desired responses by 15 days.

The parties now turned to consider the request for an extension of time by Applicants in which to file their Trial Brief. (In Applicants November 4th motion, Applicants moved for a 2 week extension until November 24, 1975 within which to file their Trial Brief and their list of witnesses and documents. That motion did not request changes in any other dates.)

The Chairman indicated that with respect to Applicant's request for an extension of time the Board had considered the Applicant's motion in light of the discussion which took place at Prehearing Conference #7 and had set the following dates:

November 17th	Filing of Trial Brief, witness and document lists by parties other than applicants
November 21st	Filing of Trial Brief, witness and lists by applicants
November 24th	Final prehearing conference
December 1st	Hearing begins.

It was also noted that November 15, 1975 was the date in which the Department of Justice and the NRC Staff were to respond to the motion by Ohio Edison for additional discovery against these parties.

Mr. Lessy then indicated that in order to avoid any delays associated with potential protective orders for fact witnesses of the NRC Staff, and for other reasons, the Staff would not seek protective orders for its witnesses. However, the Staff would apply to the Board for subpoenas of its fact witnesses.

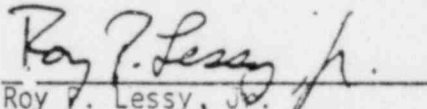
The Chairman then noted that the Board would have great difficulty in granting further extensions in the Perry hearing schedule. Mr. Lessy on behalf of Staff requested that if Applicants were to seek additional time for the filing of the trial brief, that they be required to request such time before November 17th.

Chairman Rigler then inquired as to how the parties were proceeding with respect to the possibility of reaching stipulations before trial as to authenticity of documents. Mr. Reynolds indicated that based on the rumors of the number of documents that may be involved, that applicants were not willing to make wholesale admissions as to authenticity of those documents but would consider the question of authenticity of documents on a document by document basis. Chairman Rigler then asked whether or not this policy would also apply to documents which were produced by applicants from their own files in the discovery process. Mr. Reynolds indicated that this policy of consideration of authenticity on a document by document basis was to be applied with respect to all documents including those which purportedly had been produced from the applicants

own files. Mr. Goldberg expressed surprise at this. At which point the Chairman indicated that he would like the minutes of the conference call to reflect that it is Mr. Reynolds' right to not stipulate generally to authenticity as to documents produced from applicants own files and that he had the right to take as much time as he wants to contest authenticity, but that with respect to consideration of such things as Applicants' motion to grandfather and Applicants' argument that Applicants had been prejudiced by delays caused by other parties, that the Licensing Board would also take into account any delays that would result because of applicants' own failure to stipulate as to authenticity of documents produced from their files.

Whereupon the conference call was ended.

Respectfully submitted,


Roy P. Lessy, Jr.
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 14th day of November 1975.

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50-411A

CERTIFICATE OF SERVICE

I hereby certify that copies of MINUTES OF CONFERENCE CALL HELD NOVEMBER 5, 1975, in the captioned matter, have been served upon the following by deposit in the United States mail, first class or air mail this 14th day of November 1975:

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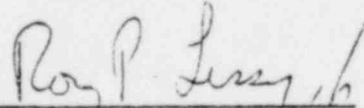
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